

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Adopt Sections 6576 and 6950
Pertaining to the Herbicide Clopyralid

This is the Initial Statement of Reasons required by Government Code section 11346.2 and the public report specified in section 6110 of Title 3, California Code of Regulations (CCR).

Section 6110 meets the requirements of Title 14 CCR section 15252 and Public Resources Code section 21080.5 pertaining to certified state regulatory programs under the California Environmental Quality Act.

SUMMARY OF PROPOSED ACTION/PESTICIDE REGULATORY PROGRAM ACTIVITIES
AFFECTED

The Department of Pesticide Regulation (DPR) proposes to adopt section 6576 and subchapter 4, article 1, section 6950 in chapter 4 of 3 CCR. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to pesticide enforcement. In summary, the proposed action would restrict sales and use of the herbicide clopyralid when it is to be used on lawn and turf, in order to protect commercial compost from potential contamination.

SPECIFIC PURPOSE AND FACTUAL BASIS

In 1997, clopyralid, a low-toxicity herbicide that poses little hazard to people, animals, and most vegetation, was initially registered for use in California by the basic manufacturer to combat yellowstar thistle, a noxious weed that can kill livestock. It was subsequently registered by the basic manufacturer and other registrants for use on lawn and turf for control of broadleaf weeds.

In 2000, clopyralid was detected in compost in Washington State and determined to be the cause of injury to non-target plants. Grass clippings from residential lawns treated with clopyralid-containing products were considered to be one source of the residues in compost. Although some commercial compost facilities in California have detected clopyralid residues, no cases of non-target vegetative damage have been documented in the state.

Compost plays a critical role in implementing the California Integrated Waste Management Act of 1989. This law requires all cities and counties to develop source reduction, recycling, and composting programs to achieve a 50 percent reduction in the amount of solid waste disposed of in California. The economic viability of the California composting industry will be threatened if residential, agricultural, commercial, and public users of compost lose confidence in the quality and safety of compost due to the presence of clopyralid residues. Local governments and waste haulers divert six million tons of yard waste annually from landfills to composting facilities, making composting a principal means by which

local governments meet the state's landfill diversion requirements.

DPR and the California Integrated Waste Management Board (CIWMB), within the California Environmental Protection Agency, began investigating clopyralid residues in compost about two years ago. DPR and CWIMB co-sponsored a workgroup that included compost industry representatives, the basic manufacturer, and other interested parties. This workgroup sponsored a series of stakeholder meetings to determine how clopyralid is used in California and which uses can potentially contaminate compost feedstocks. The workgroup coordinated stakeholder efforts to provide public information on the problem and to support a compost testing program to generate clopyralid residue data.

In March 2002, DPR announced it would seek cancellation of 15 clopyralid products registered for landscape maintenance. The focus of the cancellation was the use of clopyralid on residential lawns which DPR believed to be a source of clopyralid residues in compost. The basic manufacturer subsequently petitioned the U.S. Environmental Protection Agency (U.S. EPA) to delete residential turf uses from the clopyralid product label. In addition, the amended label would require professional applicators to notify property managers not to compost clippings from treated grass. Products with the new labels are expected to appear in the market later this year.

Assembly Bill (AB) 2356 (Chapter 591, Statutes of 2002) subsequently placed limitations on the sale and use of clopyralid turf products and required DPR to make a determination about continued use of clopyralid turf products to protect compost from becoming contaminated with persistent clopyralid residues. The Director was required to make a determination by April 1, 2003, on which lawn and turf uses are likely to result in persistent residues in compost and which uses will not. Persistent residues are defined by the bill as "residues of an herbicide in compost at levels and in a form with the potential to be toxic or injurious to plants." For those uses that are likely to cause persistent residues in compost, the Director must either impose restrictions or cancel uses.

AB 2356 required that, not later than April 1, 2003, the DPR Director shall, pursuant to Food and Agricultural Code sections 12824 and 12825, do the following:

1. Determine in writing the lawn and turf uses of the herbicide clopyralid for which there is no reasonable likelihood that the specified use will result in persistent residues in compost.
2. Take either of the following actions:
 - a. Impose restrictions on the lawn and turf uses of the herbicide clopyralid that are not identified in the determination.
 - b. Cancel any lawn and turf use that the Department determines is likely to result in persistent residues in compost.

DPR published the determination on April 1, 2003. It is listed in the "Documents Relied Upon" section of this initial statement of reasons and is available from DPR.

The restrictions that DPR plans to impose on these lawn and turf uses of clopyralid are the subject of this proposed regulatory action.

Information and data available to DPR for the AB 2356 determination included: compost monitoring data; sales data on clopyralid turf products; product stewardship efforts by the basic manufacturer; educational efforts by user associations and cooperative extensions; disposition of grass clippings; and phytotoxicity data on sensitive plants grown in various combinations of soil/compost or compost/peat containing clopyralid. The most relevant findings are:

- Grass clippings from residential and nonresidential (commercial) sites are comingled at collection sites as they become a compost feedstock. The collection of grass clippings appears to be the predominant practice, rather than grass cycling on site.

For golf courses, grass cycling on fairways and roughs is the industry standard. Grass from tees and greens is collected and may be composted, but clopyralid turf labels prohibit use on greens and tees. Some desert golf courses may remove grass clippings in the transition from summer to winter turf.

- No phytotoxicity resulting from clopyralid in compost has been reported to DPR during the last one and one-half years.
- Recently submitted studies examined the phytotoxicity of clopyralid to sensitive plants under defined conditions of soil/compost and compost/peat combinations with varying levels of clopyralid. Observations from the studies of phytotoxic symptoms vary with plant species and do not necessarily predict economic damage to the plants.
- Compost monitoring data were inconclusive, indicating a declining frequency of detection, but showing continued low levels of detection of clopyralid in some samples.
- Sales data from DPR's mill assessment database and the basic manufacturer suggest declining sales of turf products during the last one to one-and-one-half years. The declining use may account for the declining frequency of clopyralid detection in compost.
- The data on clopyralid phytotoxicity suggests that there would be a low probability of phytotoxicity occurring on sensitive plants given the levels of clopyralid detected in California compost at the

current time. However, the data indicate that in some circumstances, the potential of phytotoxicity may currently exist and does potentially exist in the future.

In AB 2356, persistent residues are defined as: "residues of a herbicide in compost at levels and in a form with the potential to be toxic or injurious to plants." DPR acknowledges the potential diverse uses of compost throughout the state in commercial agriculture, the nursery industry, and home gardens, and cannot determine that there is no reasonable likelihood of persistent residues in compost from all turf uses of clopyralid.

In the determination, DPR found that the use of the herbicide clopyralid on golf courses meets the standard in AB 2356 that there is no reasonable likelihood of persistent residues in compost. Therefore, golf courses will be exempted. Other lawn and turf uses of the herbicide clopyralid on sites such as parks, playing fields, cemeteries, and commercial (nonresidential) sites do not meet the standard of no reasonable likelihood that uses will not result in persistent residues in compost, and will be subject to regulation.

DPR expects the proposed regulations to affect about 15 clopyralid products used in parks, playing fields, and cemeteries. Clopyralid products labeled for farm, rangeland, and forest use are not affected.

Under the existing requirements of AB 2356, the regulations will require that only qualified or certified applicators can purchase clopyralid products labeled for use on lawn and turf.

Pesticide applicator types are defined in 3 CCR section 6000. These types include "private applicator," "commercial applicator," "qualified applicator certificate holder," "qualified applicator licensee," "certified private applicator," and "certified commercial applicator." An explanation of these types is needed prior to further discussion of the proposed regulatory action. Condensed/paraphrased definitions are shown below.

"Private applicator" is a person who uses or supervises the use of a pesticide for the purpose of producing an agricultural commodity on property owned or rented by that person or that person's employer.

"Commercial applicator" is a person who uses or supervises the use of a pesticide for any other purpose than that of a private applicator.

"Qualified applicator certificate holder" is a person who has qualified by examination in one or more pest control categories to supervise pesticide applications. (This type of certificate is often held by government agency employees who apply pesticides to roadsides, irrigation ditches, etc).

"Qualified applicator licensee" is a person who has qualified by examination in one or more pest control categories to supervise pesticide applications and, unlike qualified applicator certificate holders, can supervise the applications of a pest control business.

The proposed regulatory action will restrict the manner in which these licensed or certified individuals use clopyralid turf products. Proposed section 6950 will prohibit these persons from applying clopyralid to turf unless they can assure that grass clippings will remain on the site. To maximize outreach and compliance, proposed section 6576 will require licensed pest control dealers to obtain a signed statement from a licensed or certified qualified applicator certifying that he/she or their employees will not apply any product containing clopyralid to a residential lawn, and will only apply to sites where the collected grass clippings will remain on the property.

CONSULTATION WITH OTHER AGENCIES

DPR has consulted with CIWMB in jointly investigating the potential impact of clopyralid in compost. In addition, the proposed regulatory action was discussed with the Agricultural Pest Control Advisory Committee (APCAC). The APCAC is an advisory committee to the DPR Director in all matters concerning the licensing, certification, and regulation of persons and firms licensed or certified pursuant to 3 CCR, Division 6.

Copies of correspondence with these agencies are contained in the rulemaking file.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION (GOVERNMENT CODE SECTION 11346.2(b))

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen any possible adverse economic impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

IDENTIFICATION OF ANY SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECT THAT CAN REASONABLY BE EXPECTED TO OCCUR FROM IMPLEMENTING THE PROPOSAL

As described previously in this initial statement of reasons, the proposed action would adopt regulations covering the use of clopyralid in the state of California.

DPR's review of the proposed action showed that no significant adverse environmental effect to California's air, soil, water, plants, fish, or wildlife can reasonably be expected to occur from implementing the proposal. Therefore, no alternatives or mitigation measures are proposed to lessen any significant

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adverse effects on the environment.

EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed regulatory action does not duplicate or conflict with federal regulations because there are no regulations contained within the Code of Federal Regulations that address this issue.

DOCUMENTS RELIED UPON

1. Determination of the Director under Assembly Bill 2356: Clopyralid in Compost. April 1, 2003.
2. Haskell, David. Background Information for Clopyralid Determination. Memorandum to Paul Helliker, March 27, 2003. Department of Pesticide Regulation.